

PROBLEMS OF THE TERRITORIAL SEA

The divergent claims of coastal states over their adjacent sea areas will be highlighted at the international conference on the law of the sea at Geneva beginning 24 February 1958. The conference, under United Nations sponsorship, is being convened to draw up agreements defining numerous aspects of international law pertaining to the sea. Representatives of about 89 countries will attend. The problem of the width of the "territorial sea", over which the coastal state has full sovereignty, will be one of the most difficult that the conference will attempt to solve.

The 3-nautical-mile limit for the territorial sea has never enjoyed universal acceptance, and it has come under increasing attack since the end of World War II. Traditionally the principal maritime countries such as the United Kingdom, the United States, and Japan have favored the narrow 3-mile limit for the area of exclusive national jurisdiction leaving a maximum extent for the area of high seas open to freedom of navigation. Now aligned against these maritime powers are the countries

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with limited maritime interests, countries desiring exclusive control over off-shore marine resources, and many of the new Afro-Asian states. Of 62 coastal states having definite policies, only about 30 restrict their claims to 3 miles. Several of these 30 are on the point of changing to wider claims.

The Soviet Union, only recently having become a commercial and naval power, has long claimed a 12-mile limit and has sought to close additional extensive areas fringing its coasts. Several Soviet satellites, together with about 4 Free World states, also claim 12 miles, and most of the Arab states, Indonesia and perhaps others seem ready to support this limit. Many states maintain limited jurisdiction over "contiguous zones" outside their territorial seas.

In view of the growing popularity of wide claims it seems doubtful that the 3-mile principle will be acceptable to the conference. The British are reported as ready to offer a compromise proposal, possibly of 6 miles, rather than see the conference adopt a 12-mile limit or fail to come to any agreement. The Soviet bloc will doubtless attempt

to exploit the differences between the 3-mile advocates and the other conference members. Czechoslovakia and Afghanistan engineered the calling of a pre-conference meeting of some 13 "uncommitted" landlocked states, probably to influence their views on the territorial sea question and other issues, although the main interest of most of the landlocked states is in the question of access to the sea. In another meeting the Nordic countries are attempting to coordinate the positions that they will take at the conference.

Conflicting interests in respect to territorial waters have given rise to numerous disputes over a long period of time. Examples of such disputes in recent years have been those regarding the waters of the USSR, Indonesia, Iceland, and the Gulf of Aqaba.

#### USSR

Following Czarist precedents, the Soviet Union has, since the 1920's and 1930's, formalized its claim to full sovereignty over a 12-mile zone. After World War II the USSR became embroiled with Sweden and Denmark by extending its 12-mile claim to the Baltic coast, where 3- and 4-mile

limits had previously been recognized. There are semiofficial indications that the Arctic Ocean from the coast to the North Pole -- particularly the Kara, Laptev and East Siberian Seas -- are claimed as territorial seas. In addition, the waters of the Bering Sea eastward to the Bering Strait are definitely claimed as Soviet.

The USSR has several times attempted without success to secure Japanese assent to closing the Sea of Japan to non-littoral naval vessels. Semiofficially the Sea of Okhotsk is said to be a "great bay" surrounded by Soviet territory, that should be closed to outside ships and aircraft, a view aimed particularly at Japanese fishing fleets. The latest move to exclude foreign vessels and aircraft from Far Eastern waters occurred on 21 July 1957 with the closing of Peter the Great Bay, site of the Soviet Pacific fleet headquarters. The bay was claimed to be part of the internal waters of the USSR on geographic, historic, economic and security grounds. The closing of the Bay has been protested by a number of Free World governments.

Indonesia

On 13 December 1957 the Indonesian Council of Ministers announced proposed legislation defining all waters around the islands comprising the republic as "national waters" under Indonesian sovereignty. Indonesia's territorial sea would also be extended outward 12 nautical miles from straight base lines connecting the outermost points of the islands. This legislation would provide the limited fleet of Indonesian patrol vessels with a legal basis for controlling smuggling and unauthorized barter trade, currently plaguing the central government. Indonesia will defend its position before the Geneva conference, and little opposition is expected to passage of the legislation by the Indonesian Parliament.

The proposed legislation constitutes a radical departure from the previous Dutch ordinance providing a 3-mile limit around individual islands. Large expanses of water and strategic passages such as the Java Sea, Banda Sea, Makassar Strait, and Sunda Strait -- heretofore considered international waters -- would become Indonesian "national waters." Several European governments, Australia, and the US have protested the move. Canada, mindful of its islands in the Arctic, has

refrained from protesting. Although the new law would guarantee passage for foreign vessels on lawful missions, the protesting states point to it as an interference with freedom of navigation on the high seas.

#### Iceland

In May 1952 the Icelandic Government established a zone barred to foreign fishing vessels which extends 4 miles seaward from straight base lines drawn from outermost points of coasts, islands, and rocks and across the openings of bays. Since the coast of Iceland is quite irregular, this action resulted in the inclusion of large water areas. The straight-base-line method, differing from the method of following the sinuosities of the coast, had been given qualified approval by the International Court of Justice in the Anglo-Norwegian fisheries case in 1951. Iceland also denounced a 1901 treaty whereby British vessels were allowed fishing rights within a 3-mile zone. The Icelandic action was protested by the United Kingdom and other states and a ban was imposed on the importation of Icelandic fish into British markets. This move was disastrous for the Icelandic economy, forcing a search

for alternate markets in Italy, the United States and the USSR. No compromise was reached in the dispute until 1956 when it was agreed that specified amounts of Icelandic fish could be landed in Britain. Iceland nevertheless still maintains its right to exclusive jurisdiction over its adjacent seas, and may even extend its fishing limits in the near future.

Gulf of Aqaba

The problem of the Gulf of Aqaba involves the issue of freedom of navigation in a narrow arm of the sea. Although Egypt, Saudi Arabia, and Israel to date claim a 6-mile limit, this claim is of little consequence since the strategic southern entrance through the Strait of Tiran is only about 4 miles wide, and the northern end of the gulf bordering Israel and Jordan narrows to less than 4 miles. The Strait of Tiran is bordered by the Egyptian mainland and Tiran Island, claimed by Saudi Arabia.

Egypt and Saudi Arabia claim that the gulf should be divided between them by a median line and that the entrance is territorial water, a

contention made only after the founding of Israel in order to isolate the Israeli port of Eilat. The United Kingdom and the United States maintain that the gulf and its entrance are international waters.

By the Egyptian-Israeli Armistice of 1949 Israeli naval vessels are excluded from the gulf. Egypt and Saudi Arabia do not at present enforce their claims because United Nations forces stationed on the Strait of Tiran since March 1957 insure free passage of the gulf. Territorial rights in the waters at the head of the gulf are complicated by conflicting definitions of the Israeli-Jordan and Jordan-Saudi Arabia boundaries.